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***Peter Juviler, "Human Rights after Perestroika"***



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## Human Rights after Perestroika: Progress and Perils

by Peter Juviler

### Crisis of Legitimacy

Perestroika brought the greatest Soviet freedom since 1917 by the time of the millennium of conversion to Christianity in 1988. As Robert Cullen noted in these pages, the new rights and freedoms lacked institutionalization, that is guarantees in politics and law.<sup>1</sup> These guarantees Gorbachev then pledged to his people and the world. He promised in effect another conversion: from class-based, politically conditioned rights and law, to universal human rights in a law-governed state. Only by putting human rights at "the center of everything" at home and abroad could security and peace be assured, said Gorbachev at the UN.<sup>2</sup>

The Armenian earthquake of December 7, 1988, the day of Gorbachev's UN speech, provided a grim omen for the future, not only in the terrible disaster, but in the combination of systemic breakdowns and ethnic conflict with neighboring Azerbaijan. They prevented effective rebuilding and aid to the earthquake victims and to the quarter of a million refugees from Azerbaijan.

The next two years brought the cold war's end and Gorbachev's Nobel Peace Prize, but saw unrest spread and the country sink ever deeper into a crisis of economic deterioration, ethnic fragmentation, and vanishing central authority.

Demands for the president's resignation mounted, while he symbolized more than ever, within himself, the unresolved conflicts of transition from old Communist loyalties and values to new democratic commitments.

The president reaffirmed his commitment to human rights, democracy, and rule of law in February 1991. At the same time he declared: "I am a Communist and faithful to the idea of socialism. I will...go on to the next world with this..[T]hat we serve within the framework of the Communist Party is an idea that unites and reflects the interests of all strata of our people."<sup>3</sup>

Taken literally, such an avowal is incompatible with commitment to upholding human rights. By 1991, the CPSU, object of the president's rediscovered loyalty, had become a stronghold of reaction. Rather than "unite and reflect the interests of all strata of our people," the discredited CPSU stood for its diehard *nomenklatura* of privileged bureaucratic-military-industrial-police office holders. The legitimacy of the party and trust in the president stood at an all-time low.

Altogether, perestroika had run into a "crisis of efficacy" and crisis of legitimacy dwarfing those which Seweryn Bialer espied in Brezhnev's regime. The crisis may be an inevitable part of democratization after 70 years of absolutism. But the duration of the crisis and its implications for human rights depend also upon the responses of the central government and its opposition forces on both left and right.

I spelled out my doubts about the president's leadership in late 1990.<sup>4</sup> Here I aim to convey a sense of the mixed progress—whatever the USSR president's course and fate—for human rights, and of three intertwined processes shaping their realization in the USSR:



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semi-legalization of freedom, and first steps toward rule of law;

2. a push beyond perestroika, beginning in 1988 and accelerating in 1990-1991, by nationalist and "democratic opposition" forces acting from below and outside the central government, bringing new progress, perils, and complications for human rights;

3. a backlash of reaction associated with the growing influence of the industrial-military-police complex, that is, the very enemies of human rights, the "administrative-command system," and "braking forces" against whom Gorbachev had originally directed his great conversion to human rights.

The essay ends with a review of alternative paths, their implications for human rights, and a checklist of human rights priorities suggested by this essay.

## Semi-Democratization

Democratization is not only a human right in itself, inscribed in Article 21 of the Universal Declaration of Human Rights (UDHR); it is a precondition for the guarantee of other human rights.

Reforms of 1988-1989 fell short of the democratic ideal of unweighted elections. In the tradition of the weighted Duma electoral law of 1907, the Soviet reforms reserved one third of 2250 Congress of People's Deputies for representatives of social organizations. They provided opportunities for some CPSU leverage over nomination process to the other seats. The semi-democratic elections yielded a semi-democratic parliament. This comprised a conservative Congress and USSR Supreme Soviet (the sitting parliament of 542 deputies selected out of the Congress), as well as an inevitably inexperienced one.

In 1988, my acquaintances among the jurists working on the constitutional reforms were telling me that they expected a directly elected president as part of Gorbachev's effort to move power from the party to the Soviets. Gorbachev, however, did not run for popular election either as a deputy (he ran through the CPSU) or for president. The Congress of People's Deputies elected him President of the USSR Supreme Soviet in May 1989 and President of the Soviet Union in March 1990. It gave him virtually dictatorial decree powers in September and November 1991.

Republic and local elections of 1990 took place in the wake of the alteration of article 6 of the USSR Constitution, which now recognizes a multi-party system. Non-communist oppositions took control of the legislatures in the Baltic republics, Moldavia, Georgia and Armenia, forming strong oppositions in most other republics.<sup>5</sup> Anti-democratic forces remained strong, while the coun-

try lacked as yet a tolerated, cohesive loyal opposition. By some counts there were over 500 parties in the USSR.<sup>6</sup>

## Legalizing Freedom

For all its limitations, the new semi-democracy sped up the legalization of human rights. It broke the CPSU monopoly control over the legislative process. This opened up lawmaking to other initiatives and drafts,<sup>7</sup> unblocking reform bills.

The decriminalization of nonviolent expression by the law of July 31, 1989 eliminated the crime of "anti-Soviet agitation and propaganda" and "falsehoods slandering Soviet power."<sup>8</sup>

Laws of 1990 on the press and mass media, religious freedom, and rights of association legalize such freedoms for the first time in the USSR.<sup>9</sup> Ernest Ametistov, a jurist involved in the struggle for reform and human rights, has called the new laws "legislation of the transitional period from a totalitarian regime toward democracy, with all the traits following therefrom, a product of struggle and compromise," between reformers and conservatives.

The new laws legalize pluralism of opinions, faiths, organizations, and parties. But they all give the government opportunities to limit pluralism by requiring registration as the legal condition for conducting business. The responsible authorities may deny or annul registration on grounds of illegal purposes or activities (subject to court appeal). Such purposes and activities may involve, for example, advocating violent overthrow of the Soviet system, pornography, propaganda of war, incitement to racial and ethnic hatred and crime, incitement to crime, and revealing state secrets—limits all actually within human rights guidelines of the 1966 UN Covenant on Civil and Political Rights. There is court appeal, but burden of proof rests on the registrant.

The media law fueled registration battles over ownership on the question of who is the "founder" entitled to register a periodical. The USSR Committee on Press and Publishing yielded to the Union of Soviet writers and held up registration of the *Literary Gazette* [henceforth, *LG*] because the USSR Writers Union claimed ownership, according to press law expert Levon Grigorian. Then the Russian Republic Mass Media Ministry saved *LG*, along with several other periodicals in similar difficulties, by registering them instead. The masthead of No. 37, 1990 read, "Organ of the USSR Union of Soviet Writers." The next number's masthead read "Free Tribune of Writers." *LG* then faced a Writers Union lawsuit against its new "founder", the *LG* staff, to recover ownership. Legal independence does not protect independent mass media



against CPSU and government use of a near-stranglehold on paper, ink, and printing facilities, and against discriminatory mail rates and taxation, lingering censorship, or the operation of officially outlawed but still existing secret decrees.<sup>10</sup>

Nor does it guarantee shipment of the independent periodicals to foreign subscribers, as my empty mailbox shows all too well, nor secure the inviolability of correspondence and prompt airmail despatch of letters, or in general freedom of communication between the USSR and the West.

Freedom of assembly had become a *possibility* though not a firm right by the 1990s. The decree of 28 July 1988 allows authorities to deny without appeal permission for a demonstration or assembly. This opens the way to prosecutions for participating in unauthorized meetings and demonstrations. For example, three members of the "Alash" party of Kazakh national independence were detained after a demonstration in Alma Ata on 18 December 1990. Five members of *Rukh*, the Ukrainian Popular Front, and the Union of Independent Ukrainian Youth were tried in January 1991 and fined 40 rubles for picketing the military parade the previous November 7.<sup>11</sup> Demonstrations are banned and curfews imposed in twelve regions of the USSR where states of emergency are in effect.

The president in April 1990 decreed a ban on demonstrations throughout central Moscow without permission of the USSR government. The ban was safely ignored by the expressively critical demonstrators on May Day 1990, and later declared unconstitutional and a violation of international (human rights) law by the new Constitutional Review Commission, CRC.<sup>12</sup>

Another target of reform has been the denial of freedom of movement internationally and at home. Permitted rates of emigration have soared since 1987 to the highest levels yet since they became an East-West issue (perhaps some 400,00 in 1990, including 180,000 to Israel).

The draft of the long-awaited emigration law allows a maximum delay of up to five years in issuing visas for travel or emigration abroad to persons exposed to "state secrets." The draft bill was delayed, beginning in the summer of 199 and continuing through the fall and into 1991, owing to the KGB's opposition to "brain drain."<sup>13</sup>

Law or no law, the bottleneck in plane and train tickets and required payment in hard currency or at greatly inflated prices or black market prices remain obstacles to the right of free movement. Foreign visitors' movements still are greatly restricted; getting visas often requires patient struggles against delays and red tape. Internal freedom of movement for all citizens in general, and still-displaced nationalities like the Volga Germans and

Crimean Tartars in particular, awaits response to the CRC's finding that internal police residence permits, *propiski*, violate international human rights and should be phased out.<sup>14</sup>

Secret governmental directives vastly outnumber and threaten to undercut citizens rights and freedoms. Seventy percent of all administrative acts (decrees, instructions, etc) are secret. The KGB alone received from the USSR Council of Ministers hundreds of instructions to issue secret directives. The CRC found that officials' arbitrary classification of documents as secret misuses the security shield of criminal law liability for revealing state secrets, "fosters abusive, unlawful limits on rights and freedoms beyond society's control" and violates "international legal norms." The CRC declared that secret acts affecting "citizens' rights freedoms and obligations are to be published within three months ...or they shall lose force at the end of that time."<sup>15</sup> Despite the CRC's finding, one may expect the Soviet central authorities to cling no less tenaciously than have the British to the cover of official secrets and the power thus protected.

During perestroika, old East-West issues of human rights faded without vanishing. Long sentences for crimes of anti-Soviet expression ceased. Prison and camp conditions remain substandard. The release of political prisoners lowered their number from a known 750 in 1986 to a level of about 70 in 1990-1991, sustained through new arrests and releases. Eighteen of the prisoners were arrested in 1990, including twelve members of the Azerbaijani opposition arrested in Baku in the context of a declared state of emergency, with military force deployed.

Central and republic authorities continue to prosecute for a variety of nonviolent crimes indicating violations of human rights to free expression such as prosecution under the decree against slandering the President, for conscientious objection, or illegal border crossing. Some troublemakers are tried on charges of ordinary crimes like so-called hooliganism. Some prisoners have been held for unaccountably and inhumanely long terms of as long as 15 years in prison for illegal flights across the border or seeking to emigrate. Releases of many prisoners of psychiatry left old cases to be cleared up. By the time of his release in the fall of 1990, Vladimir Chokhisam had been locked up in a psychiatric hospital for ten years for participating in a Human Rights Day meeting and for tearing down official slogans.<sup>16</sup>

These days, abuses of psychiatry usually entail the confinement of local complainers or persons accused of slandering the president. Despite a 1989 Health Ministry ban, the harmful and discomfiting drugs sulfazine and atropine continue to be used. The psychiatric profession



remained under the unprincipled control of the old abusers.<sup>17</sup>

## First Steps toward Rule of Law

Rule of law means both legality (*zakonnost'*) and "supremacy of law" (*verkhovenstvo prava*). It takes both legality, or due process of law, and supremacy of law (constitutionalism) to realize rule of law, and to live up to standards of international human rights. Neither *zakonnost'* nor supremacy of law existed in the Communist system of conditional rights and CPSU absolutism. Both found a place in new thinking and a foothold in practice during perestroika.

Limited progress toward international standards of due process has begun. The right to be presumed innocent until proven guilty has received legislative recognition. Defendants have the right to counsel within 24 hours of arrest, instead of after the long pre-trial investigation. The 24 hours leave the authorities time to coerce a confession without attorney's interference. There are not yet enough lawyers to assure defendants their full right to counsel even should all procedures be irreproachable (which they are not).<sup>18</sup>

Jury trials made it through the first reforms against stiff opposition, more as token than keystone of justice. Jury trials are not a right, simply a possibility. This is left to the decision of each republic, and then only in trials entailing the death penalty or maximum sentences of more than ten years. Neither wide selection of jurors from among one's fellow citizens nor unanimous votes are required. Juries are to be simply expanded benches of lay judges, people's assessors.<sup>19</sup> New law enhancing judicial status, standards and independence begins to protect the long-violated right to impartial justice.<sup>20</sup> A small but growing number of scholars and attorneys (including once-disbarred political defenders like Boris Zolotukhin) are involved in human rights advocacy, and reforms.<sup>21</sup> The legal profession overall remains below the level of pre-revolutionary distinction in education, research and professional standards. I would agree with pessimists rather than optimists as to the possible pace of criminal justice and court reforms. And that leaves out the present ill winds for reform. With passing time, moreover, it becomes ever less accurate to talk of a single "Soviet legal profession."

Various bills of rights and draft republic constitutions circulating contain impressive citations of international human rights. Though emblazoned in constitutions, human rights will lack legal force without some form of judicial review of ordinary legislation open to private petition, and holding more authority than does the CRC.

The draft new constitution of the Russian Federation includes a judicial appeals system amounting a judicial review. There are jurists who argue that human rights should be the main concern not the redistribution of powers between the center and the "subjects of the federation."<sup>22</sup>

In the first place, most of these "subjects" look to confederation rather than a more centralized federation, or to independence. Secondly, no effective country-wide system of judicial protection for human rights will work until a new treaty of union is worked out. Judicial review then may not resemble U.S. federal court roles in this as much as it does the treaty-based, supranational aspects of a regional protection system such as that of Western Europe, and its human rights covenant, commission and court.

The constitutional right to complaint in court against acts of officials which violate citizens' rights is so hedged about with limits on court competence as to leave unsatisfied an estimated 10 million complaints annually.<sup>23</sup> Appeals in registration proceedings of media, associations, etc. expand the complaint jurisdiction of the courts.

Women's rights to inviolability against abuse and rape lack protective law and social attitudes. One key to this lack has been the absence throughout Soviet history of an independent women's movement. Now such a movement is dawning, and with it hope of fuller protection for the human rights of women.<sup>24</sup>

## The Push Beyond Perestroika

Gorbachev first thought of perestroika as a program of economic restructuring. Glasnost and democratization he added as means to the end of economic revitalization. They would unleash forces of criticism and exposure against the "braking mechanism of the "administrative-command system." Glasnost came, all right. But no economic revitalization.

Growing freedom and growing want made a volatile mix. "A person both hungry and free is a worse combination than a person hungry and unfree," said Pavel Bunich. "Previously there was no such combination. In the first place, we were not hungry. In the second place, we were not free. Now we have them both."<sup>25</sup>

Back in mid-1988, one could attend a mass rally of, say the Estonian Popular Front, and though flabbergasted at this unwonted use of freedom, still figure that the popular fronts and Gorbachev could come to terms. But soon, belated, grudging Union concessions to republic autonomy and the growing liabilities of close association with the economically collapsing center fueled local demands for national autonomy and separatism. There followed a



flurry of republic declarations of sovereignty. The declarations vary. Generally they are documents of confederation or even looser association. They assert claims to control over cultural and economic development, the environment, food, resources, politics, economies, armed forces, their own foreign relations, and legislation on their territories.<sup>26</sup> Workers' movements transcend boundaries, calling first economic, then political strikes from the mines of Vorkuta to those of the Kuzbas and the Donbas in the Ukraine, and the factories of even supposedly passive Belorussia. It was not part of the president's plan for perestroika that workers, whom he told in 1986 to be "masters" in their factories and stand up to their bosses, should stand up to him and demand his resignation.

I heard a Haitian human rights advocate, Kathleen Perry, say recently, "People are not *given* rights; people *take* them." That was not in the plan of perestroika, but it is happening. The new activism complicated the defense of human rights even while often surging up in their name.

## Complications for Monitors

First, the new activism undermined central authority over the republics and localities and unleashed widespread ethnic conflict. Some republic governments respected the rights of their own minorities while pressing their own sovereignty. Other republic governments attempted to deny to their minorities the same sovereign rights which the republics pressed against the center. This applies to the governments of Moldavia, Georgia, Azerbaijan, and parts of Central Asia especially.

Second, the spread of violations diffused responsibility for them and complicated monitoring by domestic and foreign nongovernmental organizations as well as foreign governments and international organizations. Says Helsinki Watch:

The dizzy pace and scope of political and social change in the Soviet Union has bewildered both governmental and nongovernmental experts. When power was effectively concentrated in very few hands, the tasks of monitoring human rights and establishing responsibility for abuses was a relatively easy one. Now, with the increasing devolution of power to local entities, a myriad of new social and political groups, and bewildering number of new laws and draft laws in various stages of discussion and approval, it is more difficult to track human rights abuses and to determine where the responsibility lies.<sup>27</sup>

A third complication to emerge has been the disappearance of sources of information. Former dissidents and monitors leave their groups for retirement or politics.

A fourth complication has been the nationalist fragmentation of the human rights movement. The *Memorial* society (whose primary concern has been with past oppression) has been trying to compensate for this through its own effort at objective nationwide monitoring.

A fifth complication for human rights has been the intensification of hazing in the armed forces along ethnic grounds. Committees of soldiers' mothers are springing up, and the soldiers own reform organization, organization, *Shchit* (Shield), pushes for reform. The government begins to show signs of responding. Still, the abuse of draftees on ethnic grounds hardens republic resistance to the national draft.<sup>28</sup>

A sixth complication of the new legitimacy crisis is the need of human rights organizations and concerned governments to decide how to take up the issue of indigenous rights to self-determination within the Soviet recognized multinational state. What claims do titular nationalities (those after whom republics or smaller ethnic subdivisions are named) have to autonomy or separatism? How does their exercise of self-determination affect the rights of other nationalities and the individuals they comprise? Monitoring organizations hesitate to take up these issues, given their specific mandates and the vagueness of international law concerning indigenous rights, at least for the present.

Furthermore, ethnic self-assertion raises anew the question of human rights and freedoms of non-indigenous inhabitants in various Soviet regions and republics. About 75 million Soviet citizens live outside their homeland areas.<sup>29</sup> The tide of refugees, including Russians moving out of Central Asia swells the total. The state has eased up on Jewish dissidents, religion and cultural life. Replacing that is grass roots anti-semitism, in complicity with some local authorities.<sup>30</sup>

The push beyond perestroika created opportunities for human rights through new types of civil rights movements. Yet the push also complicated monitoring, outran mutual tolerance, and caused Gorbachev to change allies from reformers to reactionaries. All this acted to the detriment of human rights.

## Reaction

Gorbachev cemented an alliance against conservatives with the telephone call of December 16, 1986 to Andrei Sakharov and his wife, Yelena Bonner. With that call he invited them to return to Moscow from their exile in Gorky. Almost exactly two years later, Gorbachev's second ring of the bell, December 14, 1989, in parliament, silenced Sakharov's call for more democracy. His time, said Gorbachev, had run out. That night Sakharov



died, and the heart of the human rights movement was buried with him on December 18.

Gorbachev's confrontation with Sakharov signalled the trouble in his alliance with liberal human rights proponents. After the first ever mass May Day protest against the government in 1990, Gorbachev followed up his ineffectual ban on demonstrations in central Moscow with a decree providing punishment of up to six years confinement for "public insults or slander of the President." The first prosecutions under that law have begun.<sup>31</sup>

The president's alliance with the liberals ended when he reneged on an agreement with them over economic reform and took up a hard line in November, 1990.<sup>32</sup> On December 20, Shevardnadze electrified his listeners with his resignation speech wherein he depicted right wing opposition to "new thinking," and warned against a "coming dictatorship." Shevardnadze shunned confrontation with his old friend the president. But his Foreign Policy Association attracted to its activities a growing number of the new opposition to the president.

The violent ethnic conflict in at least nine republics must be blamed in part on years of the central government's tardy intervention, over-reaction, or deliberate use of violence and police power to put down nationalist opposition which threatens its hold.<sup>33</sup> Sometimes the government's response has been unjustifiably repressive, in a whole series of interventions, from Alma-Ata in December 1986, to the Tbilisi massacre of peaceful demonstrators in April 1989, and Baku in January 1990.<sup>34</sup> Gorbachev responded to Lithuania's declaration of independence of March 11, 1990 with building seizures, five months of blockade, and shows of force ending in the killing of 13 civilians and many injuries in Vilnius as troops seized the TV building the night of January 12-13, 1991 and five more deaths a week later in Riga, Latvia. Together these acts appeared to be botched coup attempts, planned from the center, and carried out under the illegal command of mysterious Committees of National Salvation, formed under pro-Moscow Communist Parties.

A probably authentic CPSU directive dated back on August 20, 1990 written by Secretary and Politburo member Oleg Shenin and signed by Deputy Secretary General Vladimir Ivashko, called for a party-led crack-down on "the leaders of various nationalist and anti-Soviet public formations, extremists, and deserters who have violated Soviet laws." The directive of the CPSU, of which Gorbachev was the Secretary General, violated principles and laws on independence of the courts, ordering the State and Legal Department of the CPSU Central Committee "to coordinate the activities of the USSR Procurator-General's Office, the USSR Ministry of In-

ternal Affairs, the USSR KGB, and the USSR Supreme Court."<sup>35</sup>

Presidential regrets and denials that the "tragic turn of events" in the Baltic reflected presidential policy failed to convince left or right.<sup>36</sup> The avowed upholder of human rights, freedom and rule of law had condoned or planned the illegal activities of the mysterious Committees of National Salvation, apparently fronts for local communist parties, which ordered the assaults in Vilnius and Riga. Gorbachev did not reprimand the military commanders who took their orders; he promoted USSR MVD head, Boris Pugo from major to colonel general on February 4.

After the violence in Vilnius, Elena Bonner wrote a letter to the Nobel Prize Committee on January 13, published in *Moscow News*, asking to give back Sakharov's Nobel Prize so that his name not appear beside Gorbachev's in the same list of Nobel Prize winners. Bonner mentioned the prior history under Gorbachev of Soviet troops' violence at times of nationality unrest.

Gorbachev went on to use decree powers to try to curb freedoms of expression and assembly in violation of his own pledges to uphold rule of law and human rights. The "Bloody Sunday" (No. 3) issue of the *Moscow News* and its references to the government's "criminal policy" angered Gorbachev into demanding of the Supreme Soviet that it pass a law to safeguard press "objectivity." The parliament refused this call to censorship, but appointed a committee to look into the matter. Much of TV broadcasting became in December-January a heavily censored mouthpiece for Gorbachev's own slanted version of events.

Vera Tolz reminds us that "the central and local CPSU and government authorities have so far attempted to silence only those periodicals that criticize Gorbachev's policies from democratic positions" and not for "betrayal of Socialist and Communist ideals."<sup>37</sup> The Constitutional Review Committee found in violation of the law presidential decrees banning demonstrations in central Moscow and putting soldiers on joint patrol with the police.<sup>38</sup>

## Alternatives

Perestroika is over as a process of "revolutionary" change managed from above. It leaves behind great gains in rights and freedoms. These make highly improbable a return to one-party totalitarianism, with its balance of enthusiasm and terror and its obliteration of political rights.

Between present times and Stalinism lie historic revelations of its horrors, the Khrushchev 'thaw,' the experi-



ence of glasnost, new thinking, semi-democracy, legalized freedoms, and mass movement activism. The old totalitarian core, the CPSU has lost most of whatever public trust it once had. A public opinion poll carried out under Tatiana Zaslavskaya and reported in *New Times* No. 43 for 1990 showed the full approval rating of the CPSU at fourteen percent in July 1990, about a third that given to the most trusted governmental agencies, the Supreme Soviets.

Indefinite continuation of the Gorbachev deadlock of confrontation with decentralizing forces of the democratic and nationalist oppositions seemed hardly more likely an alternative. Some U.S. observers and a dwindling number of liberal supporters saw in the continuation of Gorbachev's presidency the only salvation, the only bulwark against disintegration and civil war.<sup>39</sup> His critics, including myself, saw his responses to deepening crisis as too little, too late, too power-oriented, too distrustful of the people exercising the human rights he promised them.<sup>40</sup> Ever fewer of the president's past supporters agreed with him that the "the political center" he forms offers the country "a realistic way out of the crisis."<sup>41</sup>

The center has shifted right. Canute-like, the president ordered back in vain a rising tide of opposition movements—of demonstrations despite bans and massed troops, of populists, reformers, an independent workers' strike and reform movement,<sup>42</sup> and nationalists seeking varying degrees of self-determination.

The president depicted the March 17 referendum and its majority vote for union as a show of support for his concept of a Union. The referendum, however, settled nothing. Over most of the Soviet Union, the president's idea of a strong federation under his leadership could be imposed only by force, obviously a self-defeating move.

Gorbachev's authority waned as his power grew. It is easier to find supporters of the president in the U.S. than in the USSR. Sasha Lyubimov was the anchorperson of the *Vzglyad* (Viewpoint) program that Gorbachev had shut off the air, beginning with scheduled program on Shevardnadze's resignation. Lyubimov told "60 Minutes" for February 3, 1991, "you've made him a hero," you've made up an image of him that doesn't correspond with the facts." Only one of my Soviet acquaintances among reform lawyers, historians, and parliamentary deputies accepted Gorbachev's depiction (February 26, 1991) of the two-collar (white and blue) and multi-national opposition movements as "neo-Bolshevik" intriguers aiming to de-stabilize the country and tear it apart. From the others, one heard that Gorbachev's only way out of even greater chaos and possible civil war was to form a genuine coalition with his opposition before it is too late. The president "is breaking his head" and

"should agree to restore the union from below," said one eminent legislative consultant. He is "is dead" politically, a USA and Canada Institute scholar told me.

The consequences of presidential reaction and decline for human rights are serious and could get even worse. They go back, I often hear from Soviets, to Gorbachev's decision against his own direct election to the posts of deputy and president. This left him, as Andrei Sakharov had predicted, with no base of support other than the party-state apparatus, the military and the police. Under pressure, the president moved toward them.

Dictatorship is a third alternative. Edward Shevardnadze's warning against dictatorship has real resonance in his country. Dictatorship would mean the suppression of human rights far exceeding present violations, however short-lived it turned out to be. Vitaly Korotich of *Ogoniok* magazine has said, the military cannot feed the country. They and the rest of the right lack the program, private economic base, or the skills to prevail economically, as Pinochet and his technocrats could for sixteen years in Chile.

Moreover, millions of Soviet citizens have unlearned fear and experienced a sense of numbers and empowerment. The historian Leonid Batkin told the correspondent David Remnick:

"No dictator possesses a narcotic strong enough to put us to sleep again. Dictatorship would be doomed at conception. What could it do? It could not prevent a catastrophic collapse in the economy. It would choke on centrifugal forces in the republics and it would bring out massive civil resistance. It will, of course, cause fear, but the millions of people have learned that the regime will not live a thousand years, that the monster is mortal, will overcome that fear."<sup>43</sup>

Sooner (and this would be immeasurably better for human rights), or later, a fourth alternative will come to pass, the emergence of democracy in most former or present parts of whatever replaces the Russo-Soviet empire of the present USSR.

## Priorities

Dictatorship would add grievously to this list of human rights priorities. But short of that, priorities in human rights have expanded since 1988 from curbing Soviet government abuses against dissidents to

preserving and completing the rights revolution of glasnost and democracy and



reconciling nationality claims to self-determination with individual rights and the rights of other nationalities.

In greater detail, the list of priorities includes:

1. completing the revolution of democratization until it complies fully with Article 21 of the UDHR on free elections and government-based on consent;

2. eliminating limits on rights to political freedoms still present in the laws, in the CPSU control of most printing facilities, the discriminatory charges and restraints on independent media, in censorship, secret administrative acts, hold-ups on mailing periodicals abroad and other difficulties of international communication;

3. pressing on with judicial reforms and the creation of judicial review, within component states, and—urgent need—in some arrangement among them;

4. upgrading legal education, ending political favoritism and nepotism in law school admissions, and including human rights courses in law schools and other academic institutions (Professor Vladimir Kartashkin of the Institute of State and Law, Moscow, is teaching human rights to Cornell University students in the spring of 1991—Soviet student deserve no less);

5. releasing remaining nonviolent political prisoners and reviewing the convictions of all political prisoners; improving prisons and labor camps, completing psychiatric reforms and achieving freedom of movement at home and in foreign travel without onerous state secret restrictions—they violate human rights;

6. for women, to empower themselves as they have begun through beginning the first legal independent women's movement since 1917;

7. forming a coalition of republic and central leaders to work out *as equals* a voluntary treaty of union and agree on the principles of a constitution for the new Soviet association of sovereign states;

8. negotiating the independence of the Baltic republics, and of other republics such as Georgia, Armenia and Moldavia expressing a desire for it, conditional on their

agreement to effectively monitored measures for averting and remedying violations of individual and group rights of all nationalities on one's own or other's territories;

9. adapting human rights monitoring by Soviet and foreign organizations to the new complexities of openness and the push beyond perestroika;

10. including the principle of nationality self-determination (which does not necessarily mean separatism) in the language of the Helsinki system agreements as clearly applying to existing republics and minorities, with due respect for individual human rights;

11. strengthening the Helsinki monitoring system, complete with the human rights education envisaged in CSCE declarations;

12. ending the current ambiguous and feeble stand of the U.S. on human rights issues in the USSR (not only the USSR), recognizing in threats to human rights threats to security also, as Gorbachev himself once said; express strong concern over violations no matter at what level and where in the USSR, as violations of the Helsinki accords and threats to peace.

It may be, as Professor Alex Motyl has written, that a Soviet commitment to the same human rights values as in the West will increase adversary competition over human rights issues. If only that commitment *were* still there! Soviet fulfillment of its commitments could speed the end of its legitimacy crisis and spur East-West cooperation. The West can do its part for human rights through vigilance—and example. There could be worse competitions than one resting on a shared concept of human rights.

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## Notes

<sup>1</sup>Robert Cullen, "Human Rights: A Millennial Year," *The Harriman Institute Forum*, Vol. 1, No. 12 (December 1988).

<sup>2</sup>*Pravda*, 8 December 1988.

<sup>3</sup>Speech to Belorussian intelligentsia, 26 February 1991, *Izvestiia*, 1 March 1991.

<sup>4</sup>Peter Juviler, "Presidential Power and Presidential Character," *Soviet Union*, vol. 16, Nos. 2-3 (1991), pp. 245-255.

<sup>5</sup>*Human Rights Watch World Report 1990* (New York, January 1991), hereafter HRW, p. 381.

<sup>6</sup>*Radio Liberty Report on the Soviet Union* (hereafter, RL), 8 March 1991, p. 29.

<sup>7</sup>Ernest Amestitov, report, New York City, 27 September 1990.

<sup>8</sup>Peter Juviler, "Guaranteeing Human Rights in the Soviet Context," *Columbia Journal of Transnational Rights*, Vol. 28, No. 1 (1990), p. 149.9. Law on the Press and other Mass Media, 12 June 1990 in *Ved. SSSR (Vedemosti S"ezda Narodnykh Deputatov SSSR i Verkhovnogo Soveta SSSR)*, No. 26 (1990), item 492; Law on Freedom of Conscience and Religious Organizations, 1 October 1990, *ibid.*, No. 41 (1990), item 813; Law on Public Associations, 9 October 1990, *ibid.*, No. 42 (1990), item 839.

<sup>10</sup>Levon Grigorian, "New Soviet Law on Mass Media: More Problems of Implementation," draft of 9 December 1990; Vera Tolz, "Recent Attempts to Curb Glasnost," *RL*, 1 March 1990, pp. 1-5.

<sup>11</sup>Cronid Lubarsky, *USSR News Briefs*, 1, 31 January 1991, p. 8.

<sup>12</sup>Law on constitutional supervision in the USSR, 23 December 1989, *Ved. SSSR*, No. 29, 1989, item 572; *Izvestiia*, 15 September 1990.

<sup>13</sup>"O proekte zakona SSR o poriadke vyezda iz Soiuz Sovetskikh Sotsialisticheskikh Respublik i v"ezda v Soiuz Sovetskikh Sotsialisticheskikh Respublik grazhdan SSSR," draft law submitted by the Committee on International Affairs and Committee on Legislation of the USSR Supreme Soviet showing on this copy the effective date 1 July 1990 scratched out to 1 January 1991, four months before this writing.

<sup>14</sup>*H.R.W.*, pp. 381-384.

<sup>15</sup>A. Davydov, "Otmeny sekretnye akty," *Izvestiia*, 30 November 1990.

<sup>16</sup>International Helsinki Federation, *Human Rights Concerns in Selected Helsinki Signatory Countries*. Prepared for the CSCE Human Rights Meeting Paris, May-June 1989, p. 16; "List of Political Prisoners in the USSR as of 30 October 1990, Cronid Lubarsky, ed., *USSR News Brief: Human Rights*, 1990; Lubarsky, *ibid.*, No. 1, 1991, p. 8.; *H.R.W.* pp. 390-391.

<sup>17</sup>*H.R.W.*, pp. 392-393; Catherine Fitzpatrick, "Psychiatric Abuse in the Soviet Union," *News from Helsinki Watch*, May 1990.

<sup>18</sup>Andrei Mikhlin, "Zapret pytok: pravo osuzhdennykh k lisheniiu svobody na gummanoe obrashchenie," *Novoe Vremya* supplement, December 1988 pp. 16-17; Viktor Kogan on criminal process in *Sovetskaya Iustitsiia*, 1988 No. 3, pp. 12-13; No. 7, pp. 26-27; No. 19, pp. 21-22.

<sup>19</sup>Law on court system of USSR and Union republics, *Ved. SSSR*, No. 23, 1989, item 441, 13 November 1989 gives right to defense "from the moment of detention, arrest, or charge." Law of 10 April 1990 amended Fundamentals of Criminal Procedure of the USSR and Union republics to permit delay in entry of the defense attorney when suspect is arrested, to within 24 hours of arrest. *Ved. SSSR*, No. 16, 1990, Item 272, Article 22.

<sup>20</sup>Peter Juviler, "Secret Justice and Personal Rights," in *The Soviet Sobranie of Laws* (Berkeley: University of California, Institute of International and Area Studies, 1991), Richard M. Buxbaum and Kathryn Hendley, eds., pp. 156-172.

<sup>21</sup>Eugene Huskey, "Between Citizen and State: The Soviet Bar (Advokatura) Under Gorbachev," *Columbia Journal of Transnational Law*, vol. 28, No. 1, 1990, pp. 95-116 is less optimistic and more persuasive to me than is John Quigley, in "Law reform and the Courts," *ibid.*, pp. 59-75.

<sup>22</sup>T. Shamba and G. Kolbaia, "Huzhen li soiuzu verkhovnyi sud?" *Izvestiia*, March 23, 1991.

<sup>23</sup>Law of 2 November 1989, *Ved. SSSR*, No. 22, 1989, item 416; Amestitov.



<sup>24</sup>Tat'iana Khudakova, "Zhenshchiny idut v politiku," *Izvestiia*, 21 October 1990.

<sup>25</sup>USSR People's Deputy and economist, Pavel Bunich, interviewed in *Ogonyok*, No. 18, April 1990, p. 1.

<sup>26</sup>See, e.g., Estonian declaration of sovereignty and Law of 16 November 1988, including legislative veto of unacceptable Union laws, *Sovetskaia Estonia*, 18 November 1988; center's negative response in *Pravda*, 28 November 1988; declaration of state sovereignty of the Byelorussian SSR, 27 July 1990, *Argumenty i Fakty*, No. 31, 4-10 August 1990, 1-2; Armenian President, Ter-Petrosian, transl. from *Berliner Zeitung*, 28 August 1990 in FBIS-SOV-90-170, 55-56; draft Russian Federation constitution, 11 October 1990.

<sup>27</sup>*H.R.W.*, pp. 385, 389; quote from pp. 394-395.

<sup>28</sup>*H.R.W.*, pp. 339, 344.

<sup>29</sup>M.S. Gorbachev TV address, *Izvestiia*, 7 February 1991.

<sup>30</sup>Gennady Denisovsky, Polina Kozyreva, and Mikhail Matsovsky, "Anti-Semitism Among Russians. How Prevalent Is It?" *Moscow News*, No. 22, 1990, p. 5; Nina Tumarkin, "Russians Against Jews," *The Atlantic*, October 1990, pp. 32-45. Report by "social prosecutor" Andrei Makarov (at Helsinki Watch, 31 October 1990) of official's reluctance to punish anti-semitic incitement, prosecuted only under great public pressure after the 18 January 1990 attack by members of the ultranationalist group *Pamyat'* on the April writer's group.

<sup>31</sup>Decree of 21 May 1990, *Ved. SSR*, No. 22, items 391-392; Lubarsky, ed. *USSR News Brief: Human Rights*, No. 12, 31 December 1990, pp. 2-3.

<sup>32</sup>S. Shatalin, "You Must Not Fight Evil with Evil," *Komsomolskaia Pravda*, 22 January 1991, trans in FBIS-SOV-91-015, pp. 29-30.

<sup>33</sup>For self-criticism of the procrastination in tending to the rights and needs of the Armenian population of Nagorno-Karabakh, see *Ved. SSSR*, No. 29, item 464, 1988; Gorbachev spoke about past underestimation of the nationality crisis at the 28th CPSU Congress, *Pravda*, 3 July 1990.

<sup>34</sup>"Patterns of Violence: Lithuania is Latest Example of Soviet Army's Use of Lethal Force," *News from Helsinki Watch*, 25 January 1991; *H.R.W.*, pp. 388-391.

<sup>35</sup>Julia Wishnevsky, "The 'Law-Based State,' Soviet Style," *RL*, 8 March 1991, pp. 1-2.

<sup>36</sup>Gorbachev's declaration, *Izvestiia*, 23 January 1991. Among those saying that Gorbachev knew of the onslaughts in advance, is the conservative leader, Colonel Viktor Alksnis, FBIS-SOV-91-025, Tokyo TV, 1 February 1991, pp. 63-64. One Soviet official told me, not for attribution, that Gorbachev could have used his presidential powers, declared martial law, to take control in Lithuania and Latvia, but the president did not want to take public responsibility for what happened. See also Jeri Laber, "The Baltic Revolt," *The New York Review of Books*, 28 March 1991, pp. 60-64.

<sup>37</sup>Vera Tolz, "Recent Attempts to Curb Glasnost'," *RL*, 1 March 1991, pp. 1-6.

<sup>38</sup>See also Wishnevsky, pp. 2-4.

<sup>39</sup>Stephen Cohen's op-ed defense of Gorbachev, *New York Times*, 11 March 1991; Jerry Hough, in the *Washington Post* National Weekly Edition, 23 February-3 March 1991. Correspondents of these papers and news magazines have been giving Gorbachev a bad press for months. Fred Starr questioned Stephen Cohen's support for Gorbachev, on CNN's "Crossfire," 8 March 1991.

<sup>40</sup>"Esteemed Mikhail Sergeevich," he heard from the former head of his economic reform team, Stanislav Shatalin, "your capitulation to the 'black colonels, Alksnis, Petrushenko and Makashov, simply shocks me....The struggle to retain your power coincides with the struggle for the people's welfare and human dignity. 'You Can't Use Evil to Fight Evil,' *Komsomolskaia Pravda*, 22 January 1991, trans. in *CDSP*, vol. 43, No. 5, p. 4. See also Ales Adamovich's warning against reaction after Shevardnadze's resignation speech warning of dictatorship, *Izvestiia*, 21 December 1990.

<sup>41</sup>*Izvestiia*, 1 March 1991; see also the combination of vague promises to the republics and distinct threats against protestors and strikers in the Agreement of Gorbachev and nine republic presidents, *ibid.*, 24 April 1991.

<sup>42</sup>A.G. Shablinskii, "Kuda Rabochee Dvizhenie?" *Rabochii Klass i Sovremennyi Mir*, No. 4 (1990), p. 130, thanks to Daniel Orenstein; on spreading miner's and Byelorussian workers' strikes directed against Gorbachev and in support for Yeltsin, see the reports of Clines and Schmemmann in the *New York Times*, 31 March, 9 April, 11 April, etc., 1991.

<sup>43</sup>*The Washington Post* National Weekly Edition, 25-31 March 1991, p. 17.



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